IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 955 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE COMPANYLIMITED

Versus

SHAKINA UMMAR

Appearance:

1. Special Civil Application No. 955 of 2004

MR PV NANAVATI for Petitioner No. 1

MR VIBHUTI NANAVATI for Petitioner No. 1

RULE SERVED for Respondent No. 1,3-9

MR VH KANARA for Respondent No. 2

SERVED BY AFFIX.-(R) for Respondent No. 2

MR PREMAL S RACHH for Respondent No. 3

MR TUSHAR MEHTA for Respondent No. 4-9

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 14/12/2004

ORAL JUDGEMENT

It is very unfortunate that inspite of this matter being adjourned time and again, Shri VH Kanara,

learned advocate appearing on behalf of respondent No.2 herein, who is the main contesting party, has chosen to remain absent. In this matter, Rule came to be issued on 27.1.2004. On 14th September 2004, this Court passed an order listing the petition for Final Hearing on 21st October 2004. On 24th October 2004, the matter came to be adjourned to 2.12.2004. Thereafter, it came up for hearing on 7th December 2004. On 7th December as the learned advocate appearing for respondent No.2 was absent the matter was adjourned to 8th December in First Board. On 8th December 2004 also, the learned advocate appearing for respondent No.2 was absent. However, in the interests of justice the matter was adjourned to 14th December 2004 with a specific observation that on 14.12.2004 even in absence of the learned advocate for the respondent No.2 the Court may decide and dispose of the matter finally in their absence. Today when the matter was called out in the 1st sessions, the learned advocate appearing for respondent No.2 who is the main contesting party was absent and therefore the matter was kept back. In the second session the matter was called out again the learned advocate for the respondent No.2 is absent. Under the circumstances, this Court has no other alternative but to decide and dispose of the present Special Civil Application on merits ex parte.

2. In this petition under Article 227 of the Constitution of India, the petitioner Insurance Company has challenged the legality and validity of the order passed by the learned Motor Accident Claims Tribunal (Aux.), Jamnagar dated 20th July 2002 below Exh. 7 in Claim Execution Petition No. 157 of 2000 by which on an application submitted by the decree-debtor the petitioner was or dered to be joined as a party judgment-debtor No.2 in the Claim Execution Petition No. 157 of 2000. The said Claim Execution Petition came to be filed by the original-applicants Shakina Ummar and others. In the Main Claim Petition, the petitioner's name came to be deleted. Thereafter, the judgment and award came to be passed by the learned Tribunal. In that Execution Petition the original-judgment debtor No.1 filed an application below Exh. 7 to join the petitioner as a party-respondent in the Execution Petition as Decree Debtor No.2 and the learned Tribunal by its order dated 20th July 2002 permitted the petitioner to be joined as a party judgment-debtor No.2 in the Execution Petition No. 157 of 2000. Hence the petitioner has filed the present Special Civil Application challenging the aforesaid order.

3. Shri PV Nanavati, learned advocate appearing on

behalf of the petitioner has submitted that when the petitioner was not a party to the main Claim Petition and on the contrary the petitioner's name came to be deleted from the original claim petition, the Tribunal could not have passed an order to join the petitioner as a judgment-debtor No.2, in the Execution Petition. There is no decree or award passed against the petitioner. Under the circumstances he has requested to allow the present Special Civil Application.

4. It is an admitted position that the petitioner came to be deleted as a party-respondent from the original Claim Petition. There is no award passed against the petitioner. Under the circumstances, when there is no award passed against the petitioner in an Execution Petition, the petitioner could not have been directed to be joined as a judgment-debtor No.2 the order passed by the learned Tribunal is without any jurisdiction. In an execution petition, the petitioner could not have been joined as a judgment-debtor No.2 when there is no award passed against the petitioner Insurance Company.

5. Considering the aforesaid facts and circumstances, the impugned order dated 20th July 2002 passed below Exh. 7 Claim Execution Petition No. 157 of 2000 is required to be quashed and set aside. It is accordingly quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs. The petitioner may move an appropriate application before the learned Tribunal for withdrawing the amount which is deposited by the petitioner in Darkhast No. 157 of 2000 and on such application being made the learned Tribunal is directed to pass appropriate order.

[M.R. Shah, J.]

rmr.